(2)

No. 00-0146

Supreme Court, U.S.
FILED
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CLERK

In The

Supreme Court of the United States

JAMES CLYDE LAMON,

Petitioner,

v.

LYNETTE CONNER, LYNNE TURNER, LISA DAVIS, LEE REDDISH, SANDRA ROGERS, ED RICKS, CHARLES STINES, COLQUITT COUNTY DEPARTMENT OF FAMILY & CHILDREN SERVICES,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the lower courts correctly applied a properly stated rule of law to the facts of this case so that state officials are entitled to qualified immunity for their participation in a child abuse investigation only after Petitioner sought, received and consented to a court order giving the state custody of the daughter making abuse allegations against him?

2. Whether the lower courts correctly applied a properly stated rule of law to the facts of this case so that an assistant district attorney is entitled to absolute prosecutorial immunity from trial when he presented the case to a grand jury and prosecuted Petitioner only after the grand jury's indictment?

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BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. Proceedings Below

Petitioner James Clyde Lamon seeks a writ of certiorari to review the Eleventh Circuit Court of Appeal's affirmance of a grant of summary judgment to Respondents by the District Court for the Middle District of Georgia. Respondents Lynette Conner, Lynne Turner, Lisa Davis, Lee Reddish and Sandra Rogers are employees of the Colquitt County Department of Family and Children Services [DFACS], a subdivision of the Georgia Department of Human Resources [DHR]. Respondent Ed Ricks is an agent with the Georgia Bureau of Investigation [GBI]. Respondent Charles Stines is an Assistant District Attorney for the Southern Judicial Circuit in Moultrie, Georgia.

Petitioner's claims arose out of his daughter's allegations of sexual abuse by him. Respondents conducted an investigation of those allegations and Petitioner was indicted by a duly constituted grand jury of Colquitt County, Georgia. After a jury trial on charges of child molestation and aggravated sodomy, Petitioner was acquitted on January 6, 1995.

Petitioner's Complaint contained two claims under 42 U.S.C. § 1983, one for conspiracy and one for violation of his rights to due process and a fair trial; it also contained five state law claims: malicious prosecution, intentional infliction of emotional distress, seduction, fraudulent interference with custody and abuse of custody.

After extensive discovery, Respondents filed a motion for summary judgment pursuant to FED. R. CIV. P. 56 on August 28, 1996, which was granted by the District Court on March 31, 1999. [Pet., App. B]. The District Court granted summary judgment to DFACS and the individual defendants in their official capacity on the basis of the Eleventh Amendment. [Pet., App. 8a] It accorded summary judgment to Assistant District Attorney Stines because there was no evidence that he had performed any acts outside the protection of absolute prosecutorial immunity. [Pet., App. 10a]. Qualified immunity was granted to the remaining Respondents, who are all members of the executive branch of state government. The District Court carefully examined the facts of the case and held that Petitioner had not adduced any evidence that Respondents had violated his rights under either malicious prosecution or due process precepts. [Pet., App. 19a, 20]. Finally, the Court ruled that the state law claims were barred for lack of a requisite *ante litem* notice. [Pet., App. 24a].[1]

Petitioner took an appeal to the United States Court of Appeals for the Eleventh Circuit, which reviewed the record, found no merit in Petitioner's arguments, and concluded that the District Court was correct to grant summary judgment in favor of Respondents. [Pet., App. 2a].

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[1] Although Petitioner purports to appeal the dismissal of his state law claims [Pet., 1], there is no federal question presented for review in this issue.

B. Corrections to Petitioner's Statement of Facts

Given this Court's admonition that counsel for Respondents "have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement in the petition" [Sup. Ct. R. 15], Respondents show that they had to file an unusual motion in the Court of Appeals to strike portions of Petitioner's brief as being violative of F.R.A.P. 28 and Eleventh Circuit Rules 28-4, 28-1(i) and 30-1 because he included in his record appendix and discussed in his brief voluminous documents which were never in the District Court record. [Resp. App. A]. The Court of Appeals granted that motion and directed Petitioner to correct and refile his brief and record. [Resp. App. B]. Nevertheless, Petitioner has continued to perpetuate many of his errors, omissions and misstatements of fact in the Petition herein; for example, he continues to insist his daughter was a virgin, but neglects to inform the Court that the same doctor testified her injuries were consistent with sexual abuse. Rather than attempt further point-by-point refutation, Respondents set out a correct recitation of the facts below.

Katherine Britt Lamon [Britt] is the daughter of Petitioner and his ex-wife. When Britt was fifteen years old and living with her mother in Florida, a fight between the two resulted in Britt being taken into police custody and eventually transferred to a psychiatric facility. While in the hospital, Britt alleged that Petitioner had sexually molested her for several years when she was younger. The Florida authorities interviewed Britt, found her allegations credible, and reported them to Respondent

Reddish, a DFACS child protective services [CPS] investigator in Colquitt County, Georgia, the county where the alleged abuse had taken place.

Once the Florida social service officials discovered that Petitioner was Britt's custodial parent, efforts were made to get him to pick up his daughter in Florida; however, Petitioner contacted Respondent Rogers and requested that DFACS pick her up instead. Respondent Rogers advised Petitioner that DFACS could not pick Britt up without having legal custody of her, so upon motion by Petitioner and his attorney, temporary custody of Britt was given to DFACS by the Superior Court of Colquitt County. Respondents Rogers and Davis then picked Britt up and placed her in foster care.

Although aware of DFACS' plans for Britt's care, Petitioner never complained to the Superior or Juvenile Court in writing about DFACS having temporary custody of his daughter or about her care while in custody. Petitioner filed the motion to transfer temporary custody to DFACS and never sought to revoke that order. In November 1993, at the hearing to appoint a guardian ad-litem, Petitioner's original attorney stated on behalf of Petitioner that a guardian should not be appointed because "we think that the Department is adequately doing a good job of representing Britt's interest and there is no conflict there." [Pet., App. 5a]. Petitioner was present and testified at that hearing. In December 1993, Petitioner consented to legal custody being placed with DFACS.

Once the allegations of abuse were confirmed by DFACS' investigation, the results were forwarded to Respondent Charles Stines, an Assistant District Attorney

for the Southern Judicial Circuit, in conformance with O.C.G.A. § 19-7-5(e). Respondent Ricks of the GBI was assigned by his supervisors to investigate this matter for the purpose of pursuing a criminal prosecution. In addition to reviewing the investigatory file, Respondent Ricks conducted his own interview of Britt and other parties. Respondent Stines, upon reviewing the entire investigation and meeting with Britt personally, believed she was credible and decided to prosecute the case; none of the other Respondents in this action participated in the decision to prosecute. The case was presented to the grand jury, which indicted Petitioner on charges of child molestation and aggravated sodomy. Petitioner was tried to a jury and acquitted on January 6, 1995.

During and after her father's trial, Britt's behavior changed for the worse. Because Britt became unmanageable, DFACS filed a petition with the Juvenile Court of Colquitt County to revert custody back to Petitioner. Shortly after the petition was granted, this lawsuit was filed.

ARGUMENT

I. THE WRIT SHOULD BE DENIED BECAUSE THE COURT OF APPEALS PROPERLY APPLIED ADMITTEDLY CONSTITUTIONAL RULES OF LAW – PROVIDING THAT STATE EMPLOYEES MAY BE ENTITLED TO IMMUNITY FROM TRIAL – TO THE FACTS OF THIS CASE

Certiorari should be denied in this case because it merely involves asserted errors which consist of "erroneous factual findings or the misapplication of a properly stated rule of law." (Sup. Ct. R. 10). Petitioner does not

challenge the constitutionality of the rule of law in this case that "qualified immunity protects government officials performing discretionary functions from civil trials (and from the other burdens of litigation, including discovery) and from liability if their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This Court has recently reiterated that "[w]hat this means in practice is that whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken." *Wilson v. Layne*, 526 U.S. 603, 614 (1999) (internal quotations omitted). "Clearly established" for purposes of qualified immunity means that "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Contrary to the hyperbolic and unsubstantiated allegations throughout the Petition that there are no civil rights in Georgia [*see, e.g.*, Pet., 6-9, 11, 17], these principles continue to be the guidelines adhered to in qualified immunity cases in the Eleventh Circuit. *See Jenkins v. Talledega City Board of Educ.*, 115 F.3d 821, 323 (11th Cir. 1997) (*en banc*); *Lassiter v. Alabama A & M Univ.*, 28 F.3d 1146, 1149 (11th Cir. 1994) (*en banc*). Indeed, this is precisely the rule followed by the District Court and affirmed by the Court of Appeals. [Pet., App. 2a, 11-12a]. Thus, no question is presented for certiorari. [Supreme Ct. R. 10].

Nevertheless, Petitioner makes many erroneous claims in his efforts to persuade this Court to grant certiorari. First, he states that the lower courts have somehow erred by following what he calls "job description" immunity [Pet., App. 11-13a]. Such an assertion bespeaks a misunderstanding of *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1282 (11th Cir. 1998), which provides that "[t]o establish that the challenged actions were within the scope of his discretionary authority, a Defendant must show that those actions were (1) undertaken pursuant to the performance of his duties, and (2) within the scope of his authority." Petitioner apparently does not understand that this is merely a threshold test for the *Harlow* requirement that the official be acting pursuant to "discretionary authority"; it is not an ultimate determinate of the immunity issue itself. Once the "discretionary authority" question is resolved, courts still have to determine whether a constitutional right has been stated and whether it was clearly established. *Harbert, supra*, at 1284. This approach clearly comports with this Court's instruction that, in reviewing an assertion of entitlement to qualified immunity, courts "must first determine whether the Petitioner has alleged the deprivation of an actual constitutional right at all, and, if so, proceed to determine whether that right was clearly established at the time of the alleged violation." *Conn v. Gabbert*, 516 U.S. 286, 290 (1999).

Following these principles, the District Court held, and the Court of Appeals affirmed, that Respondents were entitled to qualified immunity on both the malicious prosecution and due process claims. [Pet., App. 19a, 20a]. With regard to the due process issue, it is well settled

that, although Petitioner may initially have had a liberty interest in his parent-child-family relationship, "a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham v. J.R.*, 442 U.S. 584, 603 (1979); *see also Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). Recognizing that "[s]ince the government may intervene in the family relationship when following proper procedures upon appropriate fact, [a parent] has no constitutional right which can survive procedural due process," *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990) (bracketed matter supplied), the District Court properly held that Petitioner did not have a substantive due process cause of action and analyzed his claims under settled procedural due process guidelines of this Court. [Pet., App. 19a-20a].

Those guidelines establish that, although procedural due process is a guarantee of fair procedures whereby the state may not deprive a person of liberty or property without providing "appropriate procedural safeguards," *Daniels v. Williams*, 474 U.S. 327, 337 (1986) (Stevens, J., concurring), a procedural due process violation is not complete "unless and until the State fails to provide due process." *Zinermon v. Burch*, 494 U.S. 113, 123 (1990). As the District Court recognized, no such deprivation occurred in this case; Petitioner clearly had the full panoply of procedural protections in both the juvenile court hearings and his criminal trial in superior court.[2] [Pet.,

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[2] Moreover, Petitioner could not state a procedural due process cause of action under *Parratt v. Taylor*, 451 U.S. 527

App. 20a]. Thus, since Petitioner failed to state a cause of action for a procedural due process claim under § 1983, Respondents are entitled to qualified immunity from trial, and there is no cert-worthy due process issue here. *Conn v. Gabbert, supra.*

Addressing the malicious prosecution claim, the District Court also followed well-established rules, which Petitioner does not challenge, by which courts "historically have looked to traditional doctrines of tort liability under state law for guidance as to the elements of a malicious prosecution claim." *Uboh v. Reno*, 141 F.3d 1000, 1004 (11th Cir. 1998). State and federal guidelines both provide that the existence of a grand jury indictment is *prima facie* evidence that probable cause existed for a defendant's prosecution. *L.S.T., Inc. v. Crow*, 49 F.3d 679 (11th Cir. 1995); *Marx v. Gumbinner*, 905 F.2d 1503, 1505-06 (11th Cir. 1990); *Agbonghae v. Circuit City Stores, Inc.*, 214 Ga.App. 561, 448 S.E.2d 484, 486 (1996). Thus, the intervening acts of the district attorney and the grand jury in this case broke any even remotely arguable chain of causation between the DFACS and GBI Respondents and Petitioner's indictment. Moreover, even absent indictment, "law enforcement officials who reasonably but mistakenly conclude that probable cause is present" are

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(1981) and its progeny, which provide that "a statutory provision for a post-deprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process." *Zinermon, supra*, at 128. The fact that Petitioner herein had an opportunity to pursue his damage action under the Georgia Tort Claims Act demonstrates conclusively that his state remedies are adequate. O.C.G.A. § 50-21-20 *et seq.*; *Rittenhouse v. DeKalb County*, 764 F.2d 1451, 1459 (11th Cir. 1985).

entitled to qualified immunity. *Hunter v. Bryant*, 502 U.S. 224, 227 (1991); *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

The District Court carefully examined the record and found that Petitioner had "not met his burden to set forth specific facts which show that any of the other defendants, except the prosecutor, made any part of the decision to prosecute Lamon or otherwise improperly influenced the grand jury or the prosecutor." [Pet., App. 17a] Nor had Petitioner "asserted that the remaining defendants concealed any facts from the prosecutor or committed any actions themselves which would support his claim." [*Id.*].

As with his statement of facts, however, Petitioner egregiously misstates the lower courts' opinions by claiming that they have granted Respondents "blanket" – presumably absolute – immunity. [Pet., 16, 20, 27]. Nothing could be further from the truth: the only Respondent granted absolute immunity, and properly so, was Respondent Stines, Assistant District Attorney for the Southern Judicial, who alone made the decision to prosecute Petitioner, and who has immunity from trial in this case on the basis of *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976) (in initiating prosecution and presenting State's case, prosecutors are immune from civil damage actions) and its progeny. [Pet., App. 11a]. Petitioner does not raise a credible claim that the lower courts' rulings on this issue conflict with a *specific* decision of this Court. [Pet., 12].

"This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather

than the other, though fair-minded judges could find it tilting either way." *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498, 502 (1951). Because the asserted errors herein consist merely of "erroneous factual findings or the misapplication of a properly stated rule of law," and because the lower courts properly applied correct rules of immunity law, Petitioner does not present any "compelling reasons" which would warrant the grant of a writ of certiorari. (Sup. Ct. R. 10).

II. THE WRIT SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' OPINION DOES NOT CREATE A CONFLICT BETWEEN THE CIRCUITS

Petitioner discusses six cases from other federal circuits and claims that, in those cases, plaintiffs were properly granted trials, whereas here, he was unjustly deprived of a trial. These claims are totally without merit and present no basis for a grant of certiorari.[3] A reading of those six cases reveals that they are all distinguishable from the case at bar: First, in *Vinson v. Campbell County Fiscal Court*, 820 F.2d 194, 201 (6th Cir. 1987) [Pet. 22], the Court ruled that a social worker violated a parent's substantive due process rights when she went out of state to take children into custody without proper authority. In stark contrast, the DFACS caseworkers herein were asked by Petitioner himself to bring his daughter back to Georgia, but they did not do so until Plaintiff filed a motion in

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[3] Nor do the voluminous string cites in various footnotes throughout the Petition even set forth accurate parenthetical analyses, much less serious bases for a grant of certiorari. [See, Pet., 6-12 n. 5-7].

Juvenile Court, which placed custody in DFACS. [Pet., App. 20a].

The second case cited by Petitioner, *Snell v. Tunnell*, 920 F.2d 673, 700 (10th Cir. 1990) [Pet., 23] is also inapposite because it denied qualified immunity to officials who conducted an unconstitutional entry and search of a private home. There were no allegations of an unreasonable search in this case. Similarly, *Sevigny v. Dicksey*, 846 F.2d 953 (4th Cir. 1988) [Pet., 23] is distinguishable because it denied qualified immunity to police officers for an unconstitutional warrantless arrest; whereas here, Petitioner did not turn himself in for arrest until after indictment by a grand jury. [Pet., App. 15a].

Petitioner's quotation from *Wilkinson v. Russell*, 182 F.3d 89, 104 (2d Cir. 1999) [Pet. 24] is but *dicta*, since the court's actual holding was that the plaintiff parents did *not* state a violation of their constitutional rights and that it was objectively reasonable for the defendants to conduct the child abuse investigation as they did. 182 F.3d at 108-109. Likewise, *Malik v. Arapahoe County Dept. of Social Serv.*, 191 F.3d 1306 (10th Cir. 1999) [Pet., 24] dealt with a denial of immunity to a social worker who sought and received an *ex parte* telephone order from a magistrate authorizing her to take plaintiff's children into custody; here, of course, Petitioner himself sought and obtained a written Juvenile Court order authorizing Respondents to care for his daughter. [Pet., App. 20a]. Finally, in *Wallis v. Spencer*, 193 F.3d 1054 (9th Cir. 1999) [Pet., 25 (incorrectly cited)], plaintiff's children were taken into custody without any court order at all; again, no bearing on the present case. None of these six cases – nor, indeed, none

of the multitude of cases string-cited in footnotes – provides "even scant metaphysical support" for Petitioner's argument that the lower courts erred in this case or that citizens of Georgia and the Eleventh Circuit are bereft of fundamental rights. *Conn v. Gabbert, supra.*

Consequently, certiorari should not be granted in this case because it is not one "involving principles the settlement of which is of importance to the public as distinguished from that of the parties, . . . [or] where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *NLRB v. Pittsburgh Steamship Co., supra,* at 502.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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RESPONDENTS' APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE No. 99-10815-D

JAMES CLYDE LAMON,

Plaintiff/Appellant,

v.

LYNETTE CONNER, et al.,

Defendants/Appellees.

On Appeal from the United States District Court
for the Middle District of Georgia
Civil Action No. 95-CV-28 (WLS)

APPELLEES' MOTION TO STRIKE

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LAMON V. CONNER

Case No. 99-10815-D

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JAMES CLYDE LAMON,

Plaintiff/Appellant,

v.

LYNETTE CONNER, *et al.*,

Defendants/Appellees.

CASE No.
99-10815-D

APPELLEES' MOTION TO STRIKE

COME NOW Defendants/Appellees Lynette Conner, Lynne Turner, Lisa Davis, Lee Reddish, Sandra Rogers, Ed Ricks, Charles Stines and the Colquitt County Department of Family and Children Servicers [DFACS], a subdivision of the Georgia Department of Human Resources [DHR] [hereinafter "Defendants"] and move the Court pursuant to F.R.A.P. 28(a) to strike those portions of Appellant's Brief which refer to documents which were not part of the District Court record. In support of this motion, Defendants show the Court as follows:

1.

This is an appeal by Plaintiff/Appellant [hereinafter "Plaintiff"] from an order of the District Court for the Middle District of Georgia granting Defendants' motion for summary judgment. The underlying action is one for damages pursuant to 42 U.S.C. § 1983 and state law in which Plaintiff claims that Defendants violated his constitutional and state rights during their investigation of his daughter's allegations of sexual abuse by him.

2.

Defendants Lynette Conner, Lynne Turner, Lisa Davis, Lee Reddish and Sandra Rogers are employees of the Colquitt County Department of Family and Children Services [DFACS], a subdivision of the Georgia Department of Human Resources [DHR]. Defendant Ed Ricks is an agent with the Georgia Bureau of Investigation [GBI]. Defendant Charles Stines is an Assistant District Attorney for the Southern Judicial Circuit in Moultrie, Georgia.

3.

Plaintiff was indicated by a duly constituted and composed Grand Jury of Colquitt County, Georgia, on charges of child molestation and aggravated sodomy, but was acquitted after a jury trial. Plaintiff alleges in this action that Defendants conspired to take custody of his daughter without due process and to maliciously prosecute him.

4.

Plaintiff served the Brief of Appellant on September 8, 1999, accompanied by eight (8) volumes of "record" excerpts which violate 11th Cir. Rule 30-1 in that they contain far more than the documents specified in that rule. More importantly, Plaintiff's "record" excerpts contain documents which were never part of the District Court record. Those documents are as follows: Katherine Britt Lamon's School Record (Plaintiff's Tab 6); Katherine Britt Lamon's Medical Record (Plaintiff's Tab 7); Katherine Britt Lamon's St. Johns' River Hospital Records (Tab 8); Katherine Britt Lamon's Florida State Delinquency Materials (Tab 9); DFACS Colquitt County Protocol (Tab 10); *State v. Lamon* Pre-Trial Motion Transcript 5/31/94 (Tab 12); *State v. Lamon* Pre-Trial Motion Transcript 10/3/94 (Tab 13); Statement of James Clyde Lamon in *Lamon v. Schwarz* (Tab 20); and Statement of Katherine Britt Lamon in *Lamon v. Schwarz* (Tab 21).

5.

F.R.A.P. 28(a) (7) requires appellants to include in their brief "a statement of facts relevant to the issues submitted for review with appropriate references *to the record*." (emphasis supplied). In addition, an appellant's argument section must also contain citations to the record. F.R.A.P. 28(a) (8). Plaintiff makes numerous references to those documents which were never part of the District court record in both the statement of facts and argument sections of his brief. In the table of contents to his "record" excerpts, Plaintiff groups these documents under a "R.30-1(k)" heading. However, 11th Cir. R. 30-1

also requires that the "relevant documents" under subpart (k) must be a "portion[] of the *district court . . . record.*" (emphasis supplied).

6.

This Court has indicated that the proper method for assuring that such non-record "evidence" will not be improperly relied upon is to make a motion to strike those portions of Plaintiff's brief which refer to such "evidence." *Riley v. City of Montgomery, Ala.*, 104 F.3d 1247, 1251 n.4 (11th Cir. 1997); *Diversified Numismatics v. City of Orlando, Fla.*, 949 F.2d 382, 384 (11th Cir. 1991) ("Appellants should not have referenced material not in the record, and we will not consider any non-record evidence or arguments based upon non-record evidence."). *See, also, Newhouse v. McCormick*, 130 F.3d 302, 304 (8th Cir. 1997) (approving earlier grant of motion to strike portion of appellant's brief for failure to conform to FRAP 28(c)); *Holmberg v. Baxter Healthcare Corp.*, 901 F.2d 1387, 1392 n.4 (7th Cir. 1990) (granting motion to strike portions of appellate brief where party, in referring to matters never entered into record as evidence, was "impermissibly attempting to build a new record on appeal").

7.

Additionally, Plaintiff's brief violates two other rules of this Court: 11th Cir. R. 28-4, which requires that "[r]eferences to the record in a brief shall be to volume number (if available), document number, and page number; and 11th Cir. R. 28-1(i), in that its statement of

the case does not cite the "volume, document number and page number of the *original record* where the matter relied upon is to be found." (emphasis supplied). Instead of conforming to these rules of this Court, Plaintiff cites to voluminous documents which he has filed as purported "record" excerpts but which, as shown above, contain several documents which were not part of the record below. Moreover, Plaintiff has numbered these documents in a manner which does not conform to the document numbers on the District Court docket sheet, which is supposed to form the basis for citations to the record by the parties. Naturally, Plaintiff's failure to conform to these rules has increased the difficulty, time and effort required by counsel for Appellant/Defendants to prepare their responsive brief, and presents yet another reason supporting their motion to strike all of those portions to the Brief of Appellant containing incorrect or invalid record references.

8.

The rules of this Court provide that counsel should prepare a "proper" statement of facts which "reflects a high standard of professionalism." 11th Cir. R. 28-1(i) (ii). "These requirements are not to be taken lightly." *Johnson v. City of Fort Lauderdale, Fla.*, 126 F.3d 1372, 1373 (11th Cir. 1997). Defendants respectfully submit that counsel for Plaintiff/Appellant has not met this high standard.

WHEREFORE, Defendants urge the Court to grant their motion to strike and disregard those portions of the

Brief of Appellant which violate F.R.A.P. 28(a), 11th Cir. R. 28-4, 11th Cir. R. 28-1(i) and 11th Cir. R. 30-1.

This 8th day of October 1999.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing **APPELLEES' MOTION TO STRIKE**, prior to filing the same, by depositing a copy thereof, postage prepaid, in the United States Mail, properly addressed upon:

Demosthenes Lorandos
214 North Fourth Avenue
Ann Arbor, Michigan 48104

Attorney for Plaintiff/Appellant

This 8th day of October 1999.

/s/ Carol Atha Cosgrove
CAROL ATHA COSGROVE

RESPONDENTS' APPENDIX B

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 99-10815-DD

JAMES CLYDE LAMON,

Plaintiff-Appellant

versus

LYNETTE CONNER,
LYNNE TURNER,
ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Georgia

(Filed Oct. 29, 1999)

ORDER:

Appellees' motion to strike portions of Appellant's brief, construed as a motion to strike portions of Appellant's brief and record excerpts, is GRANTED. Appellant is directed to file a corrected brief and corrected record excerpts within fourteen (14) days of the date of this Order. *See* 11th Cir. R. 28-4, 30-1.

Appellant's motion to supplement the record on appeal is DENIED.

/s/ Frank M. Hull
UNITED STATES CIRCUIT
JUDGE